

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Robert Schmidt, Chairperson,
Maplewood Voters Coalition ,

Complainant,

vs.

Candidate Rebecca Cave and the
Maplewood Firefighters Association, Inc.,

Respondents.

NOTICE OF DETERMINATION OF
PRIMA FACIE VIOLATION

AND

NOTICE OF AND ORDER FOR
PROBABLE CAUSE HEARING

TO: Robert Schmidt, Chairperson, Maplewood Voters Coalition, P.O. Box 9849, Maplewood, MN 55109-0849; Rebecca Cave, 2020 Prosperity Road, Maplewood, MN 55109; and the Maplewood Firefighters Association, Inc., 2020 Prosperity Road, Maplewood, MN 55109.

On September 6, 2007, Robert Schmidt, as Chairperson of the Maplewood Voters Coalition, filed a Complaint with the Office of Administrative Hearings alleging the Respondents violated Minn. Stat. § 211B.02 by preparing lawn signs and disseminating campaign material that falsely implies that the Maplewood Fire Department endorses or supports Rebecca Cave's candidacy for City Council. After reviewing the Complaint and attached documents, the undersigned Administrative Law Judge has determined that the complaint sets forth prima facie violations of § 211B.02 as to both Respondents.

THEREFORE, IT IS HEREBY ORDERED AND NOTICE IS HEREBY GIVEN that this matter is scheduled for a probable cause hearing to be held by telephone before the undersigned Administrative Law Judge at **1:00 p.m. on Tuesday, September 11, 2007**. The hearing will be held by call-in telephone conference. You must call: **1-800-857-4643** at that time. Follow the directions and enter the code "**19193**" when asked for the meeting number. The probable cause hearing will be conducted pursuant to Minn. Stat. § 211B.34. Information about the probable cause proceedings and copies of state statutes may be found online at www.oah.state.mn.us and www.revisor.leg.state.mn.us.

At the probable cause hearing all parties have the right to be represented by legal counsel, by themselves, or by a person of their choice if not otherwise prohibited as the unauthorized practice of law. In addition, the parties have the right to submit evidence, affidavits, documentation and argument for consideration by the Administrative Law Judge. Parties should provide to the

Administrative Law Judge all evidence bearing on the case, with copies to the opposing party, before the telephone conference takes place. Documents may be faxed to Judge Neilson at 612-349-2665.

At the conclusion of the probable cause hearing, the Administrative Law Judge will either: (1) dismiss the complaint based on a determination that the complaint is frivolous, or that there is no probable cause to believe that the violation of law alleged in the complaint has occurred; or (2) determine that there is probable cause to believe that the violation of law alleged in the complaint has occurred and refer the case to the Chief Administrative Law Judge for the scheduling of an evidentiary hearing. Evidentiary hearings are conducted pursuant to Minn. Stat. § 211B.35. If the Administrative Law Judge dismisses the complaint, the complainant has the right to seek reconsideration of the decision on the record by the Chief Administrative Law Judge pursuant to Minn. Stat. § 211B.34, subd. 3.

A failure by a Respondent to participate and appear by telephone at this probable cause hearing may result in a finding that the Respondent is in default, that the Complainant's allegations contained in the Complaint may be accepted as true, and that the Presiding Administrative Law Judge may dispose of the Complaint according to Minn. Stat. § 211B.35, subd. 2.

Any party who needs an accommodation for a disability in order to participate in this hearing process may request one. Examples of reasonable accommodations include wheelchair accessibility, an interpreter, or Braille or large-print materials. If any party requires an interpreter, the Administrative Law Judge must be promptly notified. To arrange an accommodation, contact the Office of Administrative Hearings at 100 Washington Avenue South, Suite 1700, Minneapolis, MN 55401, or call 612/341-7610 (voice) or 612/341-7346 (TTY).

Dated: September 7, 2007

/s/ Beverly Jones Heydinger
BEVERLY JONES HEYDINGER
Administrative Law Judge

MEMORANDUM

Respondent Rebecca Cave is a candidate for the Maplewood City Council. According to the Complaint, she has been endorsed by the Maplewood Firefighters Association (MFA). The MFA is a non-profit corporation that was formed in 2005 by Maplewood pay-per-call firefighters. Ms. Cave's husband, George Cave, is a Maplewood pay-per-call firefighter. He is listed as MFA's agent on filings with the Minnesota Secretary of State's Office, and MFA's mailing address is the same as Ms. Cave's home address. According to the Complaint, MFA does not represent the Maplewood Fire Department, is not a

union, and does not have any official role in representing Maplewood's fire department or firefighters. Ms. Cave does not have the endorsement of the Maplewood Fire Department. The Maplewood Fire Department does not endorse any candidate.

The Complaint alleges that campaign lawn signs prepared and paid for by Respondent Maplewood Firefighters Association and Ms. Cave's candidate profile that was submitted to and posted on the *Star Tribune's* website falsely imply that Ms. Cave's candidacy is endorsed by the Maplewood Fire Department. The lawn signs state as follows:

**MAPLEWOOD
POLICE AND FIRE
ENDORSE
Rebecca Cave
MAPLEWOOD CITY COUNCIL¹**

According to the Complaint, a disclaimer printed in small font size at the bottom of the lawn sign states that the sign was prepared and paid for by the MFA.² In addition to the lawn signs, Ms. Cave submitted a "candidate profile" to the *Star Tribune* newspaper, in which she listed as endorsements: "Maplewood Police; Maplewood Fire."

The Complaint alleges that the Respondents knowingly violated Minn. Stat. § 211B.02 by implying on both the lawn signs and the candidate profile that Ms. Cave has the endorsement of the Maplewood Fire Department. (The Complaint makes no allegation as to whether the lawn signs or candidate profile falsely imply that the Maplewood Police Department endorses Ms. Cave.)

Minn. Stat. § 211B.02 provides in relevant part as follows:

211B.02 False Claim of Support.

A person or candidate may not knowingly make, directly or indirectly, a false claim stating or implying that a candidate or ballot question has the support or endorsement of a major political party or party unit or of an organization.

In reviewing the Complaint to determine whether it sets forth a prima facie violation of the statute, this Office is required to credit as true all of the facts that are alleged in the Complaint, provided that those facts are not "patently false" or "inherently incredible."³

¹ Photo of lawn sign attached to complaint.

² The disclaimer is illegible in the attached photo.

³ See, e.g., *Halverson v. Nelson*, OAH Docket No. 4-6301-16282-CV, slip op. at 2 (2004); compare also, *Elzie v. Commissioner of Pub. Safety*, 298 N.W.2d 29, 32 (Minn. 1980) (Dismissal

The phrase “Maplewood Fire” on both the lawn signs and the candidate profile is ambiguous. The issue is whether, by claiming that “Maplewood Fire” endorses Ms. Cave, the Respondents knowingly falsely implied that Ms. Cave has the endorsement of the Maplewood Fire Department.

The Administrative Law Judge concludes that the complaint does allege sufficient facts to support finding prima facie violations of Minn. Stat. § 211B.02 as against both Respondents. If the evidence at a hearing were to establish that the Respondents knowingly made the claim that “Maplewood Fire” endorses Ms. Cave in order to imply that the Maplewood Fire Department endorses her candidacy, and the Fire Department did not do so, that would be a violation of Minn. Stat. § 211B.02. This matter will proceed to a probable cause hearing where the Administrative Law Judge will determine whether the facts available establish a reasonable belief that the Respondents have committed a violation requiring them to go to hearing on the merits.⁴

B.J.H.

of a complaint is proper only if it appears to a certainty that plaintiff can introduce no facts consistent with the complaint to support granting the relief requested).

⁴ *State v. Florence*, 239 N.W.2d 892, 902 (Minn. 1976).